

APR 10 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD M. SALAZAR,

Plaintiff - Appellant,

v.

CARLOS M. GUTIERREZ, Secretary of
Commerce,

Defendant - Appellee.

No. 04-16283

D.C. No. CV-02-02082-
GEB/GGH

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, District Judge, Presiding

Submitted April 4, 2006^{**}
San Francisco, California

Before: FERGUSON, TROTT, and KLEINFELD, Circuit Judges.

The Defendant does not put at issue whether Salazar made out a *prima facie* claim of retaliation under Title VII. The Commerce Department provided

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

“legitimate, non-discriminatory reason[s] for the adverse employment action.”¹

Therefore, Salazar must “demonstrat[e] that the reason[s were] merely a pretext for a discriminatory motive.”² Salazar attempted to prove pretext by showing that “unlawful discrimination more than likely motivated” the Commerce Department’s adverse employment decisions.³

Salazar must provide “specific and substantial” evidence to make this showing.⁴ The evidence that the Commerce Department had a legitimate reason for its decisions included Salazar’s extensive history of friction with his supervisors and co-workers on account of his sexual harassment and racist, sexist, and insubordinate remarks. His only evidence of pretext was that Ms. Greene told him that she “felt” that Salazar’s complaints of discrimination motivated Mr. Carrasco. But Ms. Greene did not, Salazar concedes, tell him that she had ever heard Mr. Carrasco say that Salazar’s EEO Complaints bore on his decision. Salazar conceded at his deposition that he did not know if Ms. Greene heard

¹ Stegall v. Citadel Broadcasting, Co., 350 F.3d 1061, 1066 (9th Cir. 2003).

² Id.

³ Lyons v. England, 307 F.3d 1092, 1113 (9th Cir. 2002).

⁴ Id.

anything along these lines from Mr. Carrasco. The mere feeling of one person about the unexpressed motivation of another person's decision cannot create a genuine issue of material fact.⁵

AFFIRMED.

⁵ Cermetek, Inc. v. Butler Avpak, Inc., 573 F.2d 1370, 1377 (9th Cir. 1978) (mere belief is not sufficient to create a genuine issue of fact).